

IN THE COURT OF CRIMINAL APPEALS OF
TENNESSEE

AT KNOXVILLE

NOVEMBER SESSION, 1999

FILED

November 23, 1999

Cecil CROWS ON, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)

Appellee,)

V.)

LARRY TRUEBLOOD,)

Appellant.)

C.C.A. NO. 03C01-9905-CR-00175

MEIGS COUNTY

HON. E. EUGENE EBLEN, JUDGE

(AGGRAVATED ASSAULT;
KIDNAPPING)

FOR THE APPELLANT:

JOE H. WALKER

District Public Defender

ALFRED LEE HATHCOCK, JR.

Assistant Public Defender

P.O. Box 334

Harriman, TN 37748

FOR THE APPELLEE:

PAUL G. SUMMERS

Attorney General & Reporter

ELIZABETH B. MARNEY

Assistant Attorney General

2nd Floor, Cordell Hull Building

425 Fifth Avenue North

Nashville, TN 37243

J. SCOTT McCLUEN

District Attorney General

FRANK HARVEY

Assistant District Attorney General

P.O. Box 703

Kingston, TN 37763-0703

OPINION FILED _____

AFFIRMED PURSUANT TO RULE 20

THOMAS T. WOODALL, JUDGE

ORDER

In this case the Defendant appeals as of right from the trial court's decision that his sentences be served by incarceration in the Department of Correction rather than through a community-based alternative sentence. In the trial court and in his brief, Defendant urges that a sentence of split confinement would be more appropriate.

Defendant pled guilty to two counts of aggravated assault and one count of kidnapping. He received sentences of three (3) years for each aggravated assault and six (6) years for the kidnapping conviction. One aggravated assault sentence was agreed in the plea agreement to be served concurrently with the kidnapping, with the sentence for the other aggravated assault conviction to be served consecutively, for an effective sentence of nine (9) years. The only determination left to the trial court was for the manner of service.

No one testified at the sentencing hearing, although the Defendant did make a statement to the court pursuant to Tennessee Code Annotated section 40-35-210(b)(6). The only evidence presented was the presentence report. The Defendant also filed a brief sentencing memorandum.

The presentence report reflects that Defendant, though only twenty-seven (27) years old at the time of sentencing, had a rather lengthy criminal history. It includes several convictions for traffic offenses, in addition to more serious convictions for misdemeanor reckless endangerment, evading arrest (three convictions), misdemeanor theft, possession of marijuana, criminal trespass, and most seriously and recently, felony child abuse. The record also reflects that he was initially given a sentence of split confinement on the felony child abuse, the probation was revoked and he was placed on community corrections. Subsequently, his

community corrections sentence was revoked and he was incarcerated in another county on that conviction at the time of sentencing in these cases.

In the prior convictions in which Defendant was subject to punishment by incarceration, he was given alternative sentences, including full probation.

Tennessee Code Annotated section 40-35-103(1)(C) provides that a sentence involving confinement can be based upon the fact that “measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the Defendant.”

Normally, one who is sentenced as a standard offender and convicted of a Class C, D, or E felony is presumed a favorable candidate for alternative sentencing options under Tennessee Code Annotated section 40-35-102(6). However, a Defendant who possesses a criminal history “evinced a clear disregard for the laws and morals of society” or shows a “failure of past efforts at rehabilitation,” is not entitled to the presumption to be a favorable candidate for alternative sentencing. Tenn. Code Ann. § 40-35-102(5)(6)(1997).

The trial court was justified in declining to order an alternative sentence for Defendant in these cases. As this was a proceeding before the trial judge without a jury, and is not a determination of guilt, and the evidence does not preponderate against the findings of the trial judge, and no error of law requiring a reversal of the judgment is apparent on the record, this case is affirmed in accordance with Rule 20 of the Court of Criminal Appeals of Tennessee.

THOMAS T. WOODALL, Judge

CONCUR:

JOSEPH M. TIPTON, Judge

JERRY L. SMITH, Judge